

## **IC 27-14-2**

### **Chapter 2. Mutual Insurance Company Reorganization**

#### **IC 27-14-2-1**

##### **Prerequisites to reorganization**

Sec. 1. (a) A mutual insurance company (MIC) may reorganize under this chapter as a mutual insurance holding company (MIHC) with one (1) or more subsidiaries after the following have occurred:

- (1) The favorable vote of its board of directors to reorganize.
- (2) The filing of an application with the commissioner.
- (3) A notice of a public hearing made to its members and the public.
- (4) At least one (1) public hearing conducted by the commissioner.
- (5) The approval of the plan by the commissioner.
- (6) A favorable vote of the eligible members of the MIC.
- (7) The issuance of an order of completion by the commissioner.

(b) The subsidiaries of an MIHC:

- (1) must include at least one (1) reorganized insurer;
- (2) may include one (1) or more stock holding companies; and
- (3) may include one (1) or more stock insurance companies, the policyholders of which are not and do not become members of the MIHC.

*As added by P.L.5-2000, SEC.4.*

#### **IC 27-14-2-2**

##### **Methods of reorganization**

Sec. 2. The reorganization of an MIC or two (2) or more MICs into an MIHC structure under this chapter may be accomplished by any means approved by the commissioner, including the following:

- (1) The establishment of at least one (1) company.
- (2) The amendment or restatement of the articles and bylaws of any company.
- (3) The transfer or acquisition of any or all of the assets and liabilities or of the stock of any company.
- (4) The merger or consolidation of two (2) or more MICs.
- (5) The merger or consolidation of two (2) or more stock holding companies as part of the merger of two (2) or more MIHCs.
- (6) The merger or consolidation of two (2) or more stock insurance companies.
- (7) The merger of an MIC's membership interests into any existing MIHC, with the continued corporate existence of the reorganized MIC as a reorganized insurer.

*As added by P.L.5-2000, SEC.4.*

#### **IC 27-14-2-3**

##### **Adoption of plan of reorganization by directors**

Sec. 3. (a) A plan of reorganization must be adopted by the board of directors of the MIC.

(b) For a plan of reorganization to be adopted by the board of

directors of an MIC, at least seventy-five percent (75%) of the members of the board of directors must vote in favor of the adoption.  
*As added by P.L.5-2000, SEC.4.*

#### **IC 27-14-2-4**

##### **Application for reorganization**

Sec. 4. Within ninety (90) days after the adoption of a plan of reorganization and before a vote on the plan by the members, the company adopting the plan must file with the commissioner an application containing the following:

- (1) A plan of reorganization.
- (2) The form of the notices to be sent to members under sections 8 and 12(b) of this chapter.
- (3) A copy of the:
  - (A) proposed articles of incorporation; and
  - (B) bylaws;

of each company to be formed under the plan, including the reorganized insurer in compliance with the requirements of IC 27-1-6.

- (4) If it is necessary to amend the current articles of incorporation or bylaws of any company that is affected by the plan, a copy of:
  - (A) the proposed articles of amendment or amended and restated articles of incorporation; and
  - (B) amended or restated bylaws;

of the company, which in the case of each domestic insurance company must comply with the requirements of IC 27-1-8.

- (5) With respect to participating policies and contracts of the reorganized insurer, a description of:
  - (A) the current dividend practices of the MIC; and
  - (B) the dividend practices to be followed by the reorganized insurer following the effective date of reorganization.

*As added by P.L.5-2000, SEC.4.*

#### **IC 27-14-2-5**

##### **Requirements for plan of reorganization**

Sec. 5. A plan of reorganization filed with the commissioner under this chapter must meet the following requirements:

- (1) It must describe all significant terms of the proposed reorganization.
- (2) It must describe in a narrative form any plan to issue stock that may be proposed in connection with the plan of reorganization.
- (3) It must:
  - (A) describe the reasons for and purposes of the proposed reorganization;
  - (B) describe the manner in which the reorganization is expected to benefit and serve the best interests of the members; and
  - (C) include an analysis of the risks and benefits to the MIC and its members of the proposed reorganization, and compare those risks and benefits with the risks and benefits of reasonable alternatives (including demutualization of the MIC)

to the reorganization.

(4) It must provide that:

- (A) a member's interest in the MIC becomes a member's interest in the MIHC;
- (B) the members' surplus protection principle will govern the actions of the MIHC and its subsidiaries;
- (C) a member's interest in the MIHC may not be transferred, assigned, pledged, or alienated in any manner except in connection with a transfer, assignment, pledge, or alienation of the policy from which the member's interest is derived; and
- (D) any member's interest in an MIHC will automatically terminate upon the lapse or other termination of the policy from which the member's interest is derived.

(5) It must describe how the plan of reorganization is to be effected, including a description of a contemplated transfer, acquisition, or assumption of assets, rights, franchises, interests, debts, liabilities, or other obligations of the applicant and any other company affected by the plan or reorganization.

(6) It must describe the:

- (A) establishment of companies;
- (B) amendment or restatement of the articles of incorporation and bylaws of a company; and
- (C) merger of companies;

that will take place under the plan of reorganization.

(7) It must provide a list of:

- (A) all individuals who are or have been selected to become directors or officers of the MIHC or any company that is a subsidiary of the MIHC; and
- (B) other individuals who perform or will perform duties customarily performed by a director or officer.

(8) The list prepared under subdivision (7) must include, for each individual on the list:

- (A) the individual's principal occupation;
- (B) all offices and positions the individual has held in the preceding five (5) years;
- (C) any crime of which the individual has been convicted (other than traffic violations) in the preceding ten (10) years;
- (D) information concerning any personal bankruptcy of the individual or the individual's spouse during the previous seven (7) years;
- (E) information concerning the bankruptcy of any corporation of which the individual was an officer or director during the previous seven (7) years;
- (F) information concerning any state or federal securities law allegations against the individual that within the previous ten (10) years resulted in a:
  - (i) determination that the individual violated the state or federal securities law;
  - (ii) plea of nolo contendere; or
  - (iii) consent decree;
- (G) information concerning the revocation during the previous

ten (10) years of any state or federal license issued to the individual; and

(H) information as to whether the individual was refused a performance or other bond during the previous ten (10) years.

(9) It must provide that any policy of any reorganized insurer that goes into force after the effective date of the reorganization, will provide that:

(A) the owner of the policy; or

(B) another person or persons specified in the:

(i) policy; or

(ii) MIHC's articles of incorporation or bylaws;

becomes a member of the MIHC. However, a plan of reorganization may provide that any person who becomes an owner of a policy or who would otherwise become a member under a policy issued during a particular period of not more than three (3) years immediately after the effective date of the plan of reorganization will not become a member until after the expiration of that period.

(10) It must provide that, with regard to a policy of the MIC in force on the effective date of the plan of reorganization:

(A) the policy continues to remain in force under the policy's terms as the policy of a reorganized insurer;

(B) the holder of a participating policy continues to have the right to receive policy dividends as provided for in the policy; and

(C) the policyholder's right to benefits, values, guarantees, and other contractual obligations of the MIC continues after the effective date of the plan of reorganization as obligations of the reorganized insurer.

(11) It must describe the nature and content of the report and financial statement to be sent annually to each member following the reorganization.

(12) It must provide that, in the event of proceedings under IC 27-9 involving a reorganized insurer, the assets of the MIHC that is affiliated with the reorganized insurer are available to satisfy the policyholder obligations of the reorganized insurer.

(13) It must provide that the name of the reorganized insurer does not include the term "mutual", except as approved by the commissioner as not being misleading to the policyholders or the public.

(14) It must provide any additional information that the commissioner may request.

*As added by P.L.5-2000, SEC.4.*

## **IC 27-14-2-6**

### **Amendment or termination of plan of reorganization**

Sec. 6. (a) A plan of reorganization that is adopted by the board of directors of the applicant may be:

(1) amended by the board of directors of the applicant:

(A) in response to the comments or recommendations of the commissioner, or any other state or federal agency or entity,

before any solicitation of proxies from the members to vote on the plan of reorganization; and  
(B) otherwise, with the consent of the commissioner; or  
(2) terminated by the board of directors of the applicant:  
(A) before notice is sent to the members under section 8 of this chapter; or  
(B) with the consent of the commissioner.  
(b) For a plan of reorganization to be:  
(1) amended; or  
(2) terminated;  
by the board of directors of an MIC, at least seventy-five percent (75%) of the members of the board of directors must vote in favor of the amendment or termination.  
*As added by P.L.5-2000, SEC.4.*

### **IC 27-14-2-7**

#### **Public hearing**

Sec. 7. (a) The commissioner shall, as soon as practicable after a plan of reorganization is filed with the commissioner but not more than ninety (90) days (or a longer period after the plan is filed as the commissioner determines for good cause), conduct a public hearing under IC 4-22-2-26 to afford interested persons an opportunity to present information, views, arguments, or comments about the plan.

(b) At least thirty (30) days before a hearing held under this section, the commissioner shall publish notice of the hearing in a newspaper of general circulation in:

- (1) the city of Indianapolis;
- (2) the city in which the principal office of the applicant is located; and
- (3) other cities or towns that the commissioner considers appropriate.

The commissioner may provide written notice of the hearing by other means and to other persons that the commissioner considers appropriate.

(c) The notice provided under this section must:

- (1) refer to the applicable statutory provisions;
- (2) state the date, time, and location of the hearing; and
- (3) include a brief statement of the subject of the hearing.

(d) At the discretion of the commissioner or the commissioner's appointee, testimony may be taken under oath or by affirmation at a public hearing under this article.

*As added by P.L.5-2000, SEC.4.*

### **IC 27-14-2-8**

#### **Notice of hearing to members and policyholders**

Sec. 8. The applicant shall, at least thirty (30) days before the public hearing required under this chapter, mail notice of the public hearing to the last known address of each member and policyholder of the MIC as shown on the books of the MIC. The notice must achieve a minimum score of forty (40) on the Flesch reading ease test or an equivalent score on a comparable test approved by the commissioner. The notice

must include the following:

- (1) Reference to the applicable statutory provisions.
- (2) A statement of the date, time, and location of the hearing.
- (3) A brief statement of the subject of the hearing, including specific notice to the member that the member's interest in the MIC will be affected by the reorganization.

*As added by P.L.5-2000, SEC.4.*

#### **IC 27-14-2-9**

##### **Prerequisites to approval of plan of reorganization**

Sec. 9. The commissioner may not approve a plan of reorganization submitted under this article unless the applicant has shown, by a preponderance of the evidence, that the plan of reorganization:

- (1) complies with the law;
- (2) includes the disclosures and notices required under this article;
- (3) is fair, reasonable, and equitable to the members and policyholders of the MIC; and
- (4) complies with the members' surplus protection principle.

*As added by P.L.5-2000, SEC.4.*

#### **IC 27-14-2-10**

##### **Approval or disapproval of plan of reorganization by commissioner**

Sec. 10. (a) Not more than one hundred eighty (180) days after the filing of the application and submission of all other information requested by the commissioner relative to the plan, or a longer period if extended by the commissioner for good cause, the commissioner shall approve or disapprove the plan of reorganization. The commissioner's approval of the plan must be conditioned upon:

- (1) the approval of the plan by the eligible members under this chapter; and
- (2) the requirements of sections 16 and 17 of this chapter.

(b) The commissioner shall fully consider any comments received at the public hearing under IC 4-22-2-27 before issuing an order under subsection (a).

*As added by P.L.5-2000, SEC.4.*

#### **IC 27-14-2-11**

##### **Notice of approval or disapproval**

Sec. 11. The commissioner shall notify the applicant upon reaching a decision on a plan of reorganization.

*As added by P.L.5-2000, SEC.4.*

#### **IC 27-14-2-12**

##### **Submitting plan of reorganization to members**

Sec. 12. (a) A plan of reorganization of an MIC must be submitted for approval by the eligible members of the MIC after approval of the application by the commissioner under section 10 of this chapter. A vote by the eligible members to approve the plan must be made at a

special or annual meeting held under IC 27-1-7-7 and this chapter.

(b) The eligible members must be sent notice of the meeting at which a plan of reorganization will be submitted for approval by eligible members. The notice must:

- (1) be mailed at least thirty (30) days before the meeting;
- (2) refer to the applicable statutory provisions;
- (3) state the date, time, and location of the meeting;
- (4) include or be accompanied by a brief statement of the subject of the meeting, including specific notice to the member that the member's interest in the MIC will be affected by the reorganization;
- (5) include or be accompanied by a copy of the plan or a summary of the plan; and
- (6) describe the member's right to attend and participate in the meeting.

(c) The notice sent under this section must achieve a minimum score of forty (40) on the Flesch reading ease test or an equivalent score on a comparable test approved by the commissioner.

*As added by P.L.5-2000, SEC.4.*

### **IC 27-14-2-13**

#### **Voting on plan of reorganization**

Sec. 13. Notwithstanding IC 27-1-7-9, with respect to a vote under section 12 of this chapter, an eligible member:

- (1) may vote in person or by proxy if the proxy soliciting material:
  - (A) includes reference to the applicable statutory provisions;
  - (B) states the date, time, and location of the meeting;
  - (C) contains a brief statement of the subject of the meeting, including specific notice that the member's interest in the MIC will be affected by the reorganization;
  - (D) was solicited and obtained from the member after the commissioner has approved the plan of reorganization under this article; and
  - (E) was found to be sufficient in the reasonable determination of the commissioner for the eligible members to make an informed decision about the plan of reorganization; and
- (2) is entitled to cast only one (1) vote on the proposed plan of reorganization, regardless of the number of policies or the amount of insurance that the member has with the MIC or any affiliate of the MIC.

*As added by P.L.5-2000, SEC.4.*

### **IC 27-14-2-14**

#### **Approval of plan of reorganization by members**

Sec. 14. For a plan of reorganization to be approved by the members of an MIC:

- (1) the plan of reorganization must be approved at a meeting at which at least ten percent (10%) of the eligible members are represented in person or by proxy; and
- (2) at least two-thirds (2/3) of the eligible members voting in person or by proxy must vote in favor of the plan.

*As added by P.L.5-2000, SEC.4.*

#### **IC 27-14-2-15**

##### **Filing minutes of meeting at which plan approved**

Sec. 15. Not later than thirty (30) days after members have approved a plan of reorganization at a special or annual meeting of members under this chapter, an applicant must file with the commissioner the minutes of the meeting at which the plan of reorganization was approved.

*As added by P.L.5-2000, SEC.4.*

#### **IC 27-14-2-16**

##### **Issuance of permit for completion of organization**

Sec. 16. (a) Before the commissioner issues a permit for completion of organization under subsection (b):

- (1) a public hearing must have been conducted under this chapter;
- (2) the commissioner must have issued notice to the applicant that the commissioner has approved the plan of reorganization of the applicant under section 10 of this chapter; and
- (3) the commissioner must have received the minutes of the meeting of the members at which the plan was approved reflecting that the plan of reorganization was on the agenda and the plan was approved.

(b) After the events referred to in subsection (a), the commissioner shall issue:

- (1) a permit for completion of organization of the MIHC; and
- (2) in the case of:
  - (A) a newly organized domestic insurance company, a permit for completion of organization as provided in IC 27-1-6-11; or
  - (B) amended articles of incorporation of a domestic insurance company, an amended certificate of authority as provided in IC 27-1-8-9.

*As added by P.L.5-2000, SEC.4.*

#### **IC 27-14-2-17**

##### **Effectiveness of plan of reorganization**

Sec. 17. A plan of reorganization is effective when each reorganized insurer and MIHC affected by the plan has filed:

- (1) its articles of incorporation or, if appropriate, its articles of amendment; and
- (2) the certificate of authority and any amended certificate of authority issued to the company by the commissioner under this chapter;

in the office of the county recorder of the county in which the principal office of the company is located, or at any later date specified in the plan of reorganization.

*As added by P.L.5-2000, SEC.4.*

#### **IC 27-14-2-18**

##### **Organization of insurer under plan of reorganization**

Sec. 18. The organization of a domestic insurance company under a plan of reorganization under this article must be conducted under IC 27-1-6 concerning the formation of domestic insurance companies.  
*As added by P.L.5-2000, SEC.4.*

#### **IC 27-14-2-19**

#### **Amendment of articles of incorporation of insurer under plan of reorganization**

Sec. 19. The amendment of the articles of incorporation of a domestic insurance company under a plan of reorganization under this article must be conducted in compliance with IC 27-1-8.  
*As added by P.L.5-2000, SEC.4.*